

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re: Chapter 11  
DELPHI CORPORATION, *et al.*, Case No. 05-44481 (RDD)  
Debtors.  
-----X  
DELPHI CORPORATION *et al.*,  
Plaintiff, Adv. Pro. 07-02597 (RDD)  
-against-  
WELLS FARGO BUSINESS AND WELLS  
FARGO MINNESOTA,  
Defendants.  
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**AFFIDAVIT IN FURTHER OPPOSITION TO DEBTORS' MOTION  
FOR LEAVE TO FILE A FIRST AMENDED COMPLAINT**

STATE OF NEW YORK     )  
                                   ) ss:  
COUNTY OF NASSAU     )

Michael T. Rozea, being duly sworn, deposes and says:

1. I am associated with Ruskin Moscou Faltischek, P.C., attorney for defendant Wells Fargo Bank, N.A. ("Wells Fargo"). I am familiar with the facts set forth and circumstances described herein based upon my representation of Wells Fargo throughout this matter, a review of the file maintained by my office and from conversations had with representatives of Wells Fargo.

2. I make this Affidavit in support of: (i) Wells Fargo's Supplemental Opposition to the Debtors' Motion For Leave to File a First Amended Complaint (the "Opposition") dated July 11, 2011; and (ii) Wells Fargo's Opposition to the Reorganized Debtors' Motion for Leave to File Amended Complaint and Motion of Wells Fargo Bank N.A. to Dismiss This Adversary Proceeding with Prejudice, dated November 24, 2010.

3. I have reviewed the following affidavits of service for each of the respective motions and orders purporting to extend the time periods in which the Debtors would serve the Summons and Complaint upon Wells Fargo Bank, N.A. (the "Extension Motions") and determined that Wells Fargo was not named on any of the following affidavits of service:<sup>1</sup>

a. Affidavit of Service for the Preservation of Estate Claims Procedures Motion, dated August 10, 2007, annexed hereto as Exhibit 1; Case No. 05-44481, Doc. No. 9039);

b. Affidavit of Service for Preservation of Estate Claims Procedures Order, dated August 23, 2007, annexed hereto as Exhibit 2; Case No. 05-44481, Doc. No. 9141);

c. Affidavit of Service for the Extension of Avoidance Action Service Deadline Motion, dated March 4, 2008, annexed hereto as Exhibit 3; Case No. 05-44481, Doc. No. 12970);

d. Affidavit of Service for the Extension of Avoidance Action Service Deadline Order, dated April 1, 2008, annexed hereto as Exhibit 4; Case No. 05-44481, Doc. No.13315);

e. Affidavit of Service for the Postconfirmation Extension of Avoidance Action Service Deadline Motion, dated April 16, 2008, annexed hereto as Exhibit 5; Case No. 05-44481, Doc. No. 13415);

f. Affidavit of Service for the Postconfirmation Extension of Avoidance Action Service Deadline Order, dated May 6, 2008, annexed hereto as Exhibit 6; Case No. 05-44481, Doc. No. 13540); or

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<sup>1</sup> For the purposes of this affidavit, I have only reviewed the affidavits of service as they relate to Wells Fargo Bank, N.A. I have not reviewed the affidavits of service as they relate to Wachovia Bank, National Association, which merged with Wells Fargo on December 31, 2008. The alleged transfers predate the Wells Fargo/Wachovia merger by approximately two and a half years.

g. Affidavit of Service for the Supplemental Postconfirmation Extension of Avoidance Action Service Deadline Motion, dated October 7, 2009, annexed hereto as Exhibit 7; Case No. 05-44481, Doc. No. 18967).

4. At the hearing held on October 22, 2009, counsel for the Debtors represented to the Court:

There has been no objection filed. We did serve the [Supplemental Postconfirmation Extension of Avoidance Action Service Deadline] motion in the usual fashion, and no objections were lodged. So we would simply ask that the order be entered as submitted.<sup>2</sup> 10/22 Transcript at 5:20-23.

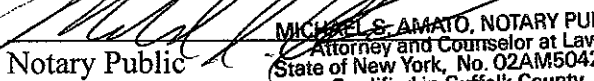
A copy of the 10/22 Transcript is annexed hereto as Exhibit "8".

5. My review of the docket of *In re Delphi Corporation, et al.*, Case No. 05-44481, indicates that no affidavit of service was filed with respect to the Supplemental Postconfirmation Extension of Avoidance Action Service Deadline Order, and accordingly no notice of the order was given to Wells Fargo.

**WHEREFORE**, I respectfully request that for the reasons set forth herein, the Motion to Amend the Complaint as against Wells Fargo Bank, N.A. must be denied and this adversary proceeding must be dismissed with prejudice, together with the costs and disbursement of this action and such other and further relief as this Court may deem appropriate.

  
Michael T. Rozea

Sworn to before me this  
11<sup>th</sup> day of July, 2011.

  
Notary Public  
MICHAEL S. AMATO, NOTARY PUBLIC  
Attorney and Counselor at Law  
State of New York, No. 02AM5042612  
Qualified in Suffolk County  
Commission Expires April 24, 2015

<sup>2</sup> "10/22 Transcript \_\_\_\_" refers to the page of the Transcript of Hearing on 10/22/09.